IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

INCOME-TAX APPLICATION NO. 76 OF 1995

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's orders

CORAM : J.P. DEVADHAR AND
B.P. DHARMADHIKARI, JJ.
APRIL 21, 2007.

Heard Shri Parchure, learned counsel for the applicant and Shri Chandurkar, learned counsel for the respondent.

This reference application filed by the revenue under Section 256(2) of the Income-tax Act, 1961, was admitted on the following questions of law :

"1. Whether on the facts and in the circumstances of the case, the Tribunal was justified in law in cancelling the penalty of Rs. 2,47,000/- levied for concealment of income ?

2. Whether on the facts and in the circumstances of the case, the Tribunal was justified in law in holding that the assessee has given explanation which is plausible and it cannot be said that there was any concealment of income involved ?

3. Whether on the facts and in the

circumstances of the case, the Tribunal was justified in law in holding that inspite of the facts brought on record as a result of investigation done, that the assessee had not come within the purview of Section 271(1)(c) of the Income-tax Act, 1961 ?

4. Whether on the facts and in the circumstances of the case, the Tribunal was justified in law in cancelling the penalty without due appreciation of relevant facts and material brought on record ?"

The assesment year involved herein is Assessment Year 1987-88.

In this case, the Assessing Officer made additions of Rs.5,90,000/- on the ground that the assessee had claimed expenses which were found to be bogus. According to the revenue, it is only after the Assessing Officer established by recording statement of the partners of the firm, transporters etc. to the effect that the assessee had resorted to concealment of income, the assessee had filed revised return and therefore the levy of penalty was justified and the Tribunal committed an error in deleting the penalty.

In our opinion, in view of the

admissions made by the partners of the firm and also transporters, the question as to whether the Tribunal was justified in deleting the penalty is a question of law that arises from the order of the Tribunal.

In this view of the matter, the Tribunal is directed to forward the statement of the case on the aforesaid questions of law as expeditiously as possible. Present application is accordingly allowed. Rule is made absolute accordingly. No costs.

JUDGE **JUDGE**

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